



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 136/2022

1. Rudresh Jhunjhunwala
2. Smt Suman
3. Mu. Hemangini Jhunjhunwala



----Appellants

Versus

1. Satish Kumar
2. Sub Registrar, Chirawa, District Jhunjhunu (Rajasthan)
3. State Of Rajasthan Through Its Tehsildar, Chirawa, District Jhunjhunu (Rajasthan.)

----Respondents

For Appellant(s) : Ms. Sukriti Kasliwal, through VC

For Respondent(s) :

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

03/02/2022

Reportable

1. By way of this civil misc. appeal, a challenge has been made to the order dated 03.09.2021 whereby and whereunder an application filed under Order 39 Rules 1 & 2 CPC has been allowed and during the course of trial of the civil suit for specific performance filed by respondent No.1-plaintiff, the appellants-



defendants have been restrained not to transfer the disputed land and to maintain status quo until the decision of the civil suit.

2. In the present appeal, the consideration before this Court is that when the trial court has exercised its discretionary and equitable jurisdiction to grant the temporary injunction in favour of plaintiff and against defendants, should this Court interfere with the order of temporary injunction passed by the trial court, under its appellate jurisdiction?

3. The appellants are defendant Nos.1 to 3 and respondent No.1 is plaintiff and respondent Nos.2 & 3 are defendant Nos.4 & 5 before the trial court. For clarity, the parties shall be referred hereinafter with the same status as called before the trial court.

4. The relevant facts of this case as culled out from the record are that plaintiff filed a civil suit for specific performance of an agreement to sell dated 30.04.2014 along with an application for temporary injunction in the year 2014 itself. The plaintiff has relied upon an agreement dated 30.04.2014 to contend that the defendant No.1 for himself and being power of attorney holder for defendant Nos.2 & 3 had agreed to sell the land of 0.49 hectare of Khasra No.961 located at Village Chirawa, District Jhunjhunu to him against total sale consideration of Rs.56,30,000/-. Plaintiff has placed on record the agreement as also the special power of attorney said to be given by defendant Nos.2 & 3 in favour of defendant No.1. As per agreement, entire sale consideration has been paid and the possession is delivered to the plaintiff. The plaintiff averred that although he was assured by the defendants to execute the registered sale deed however, it transpired to him that instead of making the sale deed in his favour, the defendants are going to sale their land to other person(s). In that backdrop of



facts, the plaintiff filed the present civil suit for specific performance along with an application for temporary injunction.

5. One of the relevant facts is also available on record that the defendants have already executed a registered sale deed dated 22.05.2014 for the area of 0.41 hectare of Khasra No.961 in favour of the plaintiff's father namely, Shri Jagdish Prasad Sharma and one Shri Vinod Kumar Bhageria and that sale deed is in relation to area of 0.41 hectare which is other part of land, than the area of 0.49 hectare of Khasra No.961 agreed to be sold to plaintiff through the agreement in question dated 30.04.2014.

6. Learned counsel for appellants has argued that the trial court has committed serious illegality and perversity in granting the injunction in the present case whereas the civil suit for specific performance itself stand bad in law and is not liable to succeed on merits, therefore, the plaintiff was not entitled for any temporary junction in his favour. She submits that the agreement in question dated 30.04.2014 itself is a void document as it suffers from uncertainty because the specifications and parameter of the land in question measuring 0.49 hectare of Khasra No.961 are absent, as such by virtue of Section 29 of Indian Contract Act, 1872, this agreement be treated as void contract. Learned counsel for the appellants submits that the agreement in question is neither registered nor properly stamped, therefore, cannot be relied upon before the court of law. She argued that neither sale consideration was paid by plaintiff nor any possession was handed over to him and the agreement in question is not a genuine and reliable document. She has further argued that apart from three defendants, their mother Smt. Shanti Devi is also co-sharer for 1/4 share in the subject land and she is not party in the present



suit as also in the application for temporary injunction, therefore, for this reason also the suit is defective. Thus, her submission is that trial court fell in error while granting injunction and, therefore, the impugned order is liable to be set aside, consequentially the application for temporary injunction deserves to be dismissed.

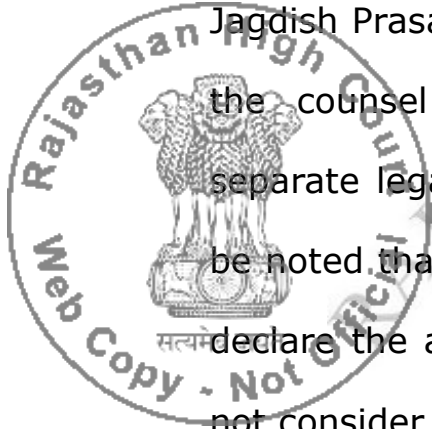
7. Heard counsel for appellants and perused the impugned order dated 03.09.2021.

8. A bare perusal of impugned order dated 03.09.2021 goes to show that the trial court has considered the agreement to sell in question as also the special power of attorney of defendant No.1 and after considering the respective pleadings of both the parties, has reached to the conclusion that *prima facie* case stands in favour of plaintiff. In the impugned order, the trial court has clearly observed that the defendants have not denied their signatures either on the agreement in question or on the special power of attorney neither the defendants have alleged that the agreement to sell in question is a forged and fabricated document nor have initiated any criminal proceedings against the plaintiff to prepare such documents falsely and forgely. The trial court has clearly observed that in the present case intricate and serious questions of fact and law are involved between the parties which can be adjudicated after recording of evidence of both the parties during the course of trial. Thus, the trial court has found *prima facie* case in favour of plaintiff, after appreciation of the respective pleadings, documents and other attending circumstances. Apart from the *prima facie* case, the trial court has also independently dealt with the points of balance of convenience and irreparable



injury. In this way, the order of trial court can be said to be a well speaking and reasoned order.

9. This is also relevant to take note that apart from the agreement to sell in question, the defendants have already sold a part of 0.41 hectare land of Khasra No.961 through registered sale deed dated 22.05.2014 in the name of plaintiff's father-Shri Jagdish Prasad Sharma and Shri Vinod Kumar Bhageria. Although, the counsel for appellants submits that they have initiated separate legal proceedings to cancel such sale deed. It may also be noted that defendants has not filed any separate application to declare the agreement to sell in question as inadmissible and for not consider the same for any purpose, due to want of registration and insufficient stamp duty. So such objection can be dealt with by trial court as and when such application would be filed by the defendants. As far as objection as to whether the agreement in question is a void document or not is concerned, the same may not be examined and decided at this stage. In the opinion of this Court, the issues raised by the counsel for appellant before this Court either disputing the factual issues or the legal issues, are amenable to be adjudicated by the trial court during course of trial of suit at appropriate stage and it is not permissible in law to usurp the jurisdiction of trial court by the appellate court, while exercising it appellate jurisdiction against the order of grant of temporary injunction. It is needless to reiterate that all these factual and legal issues are opened to be considered by the trial court during the course of trial and after recording the evidence of parties. In the given facts of present case, it cannot be said that the trial court has exercised discretion and equitable jurisdiction in an arbitrary and whimsical manner. The order impugned may not





be said to be a perverse order or suffers from grave illegality or jurisdictional error moreover, the view taken by the trial court is not an impossible view.

10. The principles of law, governing application under Order 39 Rules 1 & 2 CPC is no more *res integra* and it has settled in catena of judgments that if the trial Court has exercised its discretion in granting injunction, jurisdiction of Appellate Court to interfere with the order of trial Court is very limited. The interference in the temporary injunction order passed by the trial Court can be made only in situation where the Appellate Court is satisfied that trial Court has acted arbitrarily or contrary to law or that findings of trial Court are perverse or capricious, palpably incorrect and are wholly untenable. If, view taken by trial Court is a possible view, the same is not required to be interfered with by the Appellate Court.

11. In support of such proposition of law, judgment passed by this Court in case of *The Rajasthan State Electricity Board Versus Mool Chand Jangir (1993 3 WLC (Raj.) 338)* as well as judgments passed by the Hon. Supreme Court in case of *Wander Ltd. & Anr. Versus Antox India Pvt. Ltd. (1990 (Supp) SCC 727)* and *Mohd. Mehtab Khan & Ors Versus Khushnuma Ibrahim Khan & Ors. (2013 (9) SC 221)*, may be referred.

12. Further apart from *prima facie* case, it is also required to be considered that what nature of loss or injury or prejudice would be caused to the party, if he is restrained by way of temporary injunction during course of trial. In present case, trial court has dealt with this ingredient also and observed that balance of convenience tilts in favour of plaintiff and it is the plaintiff who may suffer irreparable loss not the defendant, if temporary



injunction is not granted. The defendant could not make out a case that they would suffer any grave loss or injury or prejudice by the injunction order passed by the trial court.

13. The Hon'ble Supreme Court, in the case of **Maharwal Khewaji Trust (Regd.) Faridkot versus Baldev Dass** reported in **[(2004) 8 SCC 488]** has propounded a principle of law in relation to grant of temporary injunction under Order 39 Rules 1 & 2 CPC that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. The said principle has further been followed in the case of **Dev Prakash & Anr. Versus Indra & Ors.** reported in **[(2018) 14 SCC 292]** wherein the Hon'ble Supreme Court observed that it is the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. The Hon'ble Supreme Court observed that the judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse.

14. After discussion of factual and legal aspect in detail, this Court is of considered view that this is not a fit case where the appellate court should exercise its power to interfere with the order of temporary injunction passed by the trial court. Thus, no



interference is called for with the impugned order and accordingly the appeal is hereby dismissed.

15. All pending application(s), if any, also stand(s) disposed of.

16. There is no order as to costs.

(SUDESH BANSAL),J

SAURABH/6



RAJASTHAN HIGH COURT



सत्यमेव जयते